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Attorneys for Defendants

VXN GROUP LLC; STRIKE 3 HOLDINGS, LLC;

GENERAL MEDIA SYSTEMS, LLC; and

MIKE MILLER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

MACKENZIE ANNE THOMA,  
a.k.a. KENZIE ANNE, an  
individual and on behalf of all  
others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware  
limited liability company; STRIKE  
3 HOLDINGS, LLC, a Delaware  
limited liability company;  
GENERAL MEDIA SYSTEMS,  
LLC, a Delaware limited liability  
company; MIKE MILLER, an  
individual; and DOES 1 to 100,  
inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGR<sub>x</sub>)**

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF STRIKE 3  
HOLDINGS, LLC'S, GENERAL  
MEDIA SYSTEMS, LLC's, AND MIKE  
MILLER'S REPLY BRIEF IN  
SUPPORT OF THEIR SPECIAL  
MOTION TO STRIKE (ANTI-SLAPP)  
PURSUANT TO C.C.P. § 425.16**

Date: January 5, 2024

Time: 11:30 am or later

Courtroom: 9B

*[Filed concurrently with Reply Brief in  
Support of Motion to Strike (Anti-SLAPP);  
and Opposition to Plaintiff's Request  
for Judicial Notice and Objection to the  
Declaration of Sarah Cohen]*

Complaint Filed: April 20, 2023

Removed: June 21, 2023

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF  
DEFENDANTS' ANTI-SLAPP REPLY BRIEF**

1                   **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS**  
2  
3                   **OF RECORD:**

4                   PLEASE TAKE NOTICE that, in accordance with Federal Rule of Evidence  
5 201, Defendants Strike 3 Holdings, LLC, General Media Systems, LLC, and Mike  
6 Miller (collectively, the “Anti-SLAPP Defendants”) will, and hereby do, request  
7 the Court to take judicial notice of the following:  
8

9                   1.       **Exhibit A**, which is a true and correct copy<sup>1</sup> of the Bibiyan Law  
10 Firm’s (“BLF”)’s March 22, 2023 “Plaintiff’s Notice of Motion and Motion for  
11 Preliminary Approval of Class and Representative Action Settlement...” in *Juarez*  
12 *v. Calmet Services, Inc.*, Los Angeles Superior Court Case No. 21STCV33668.  
13

14                   2.       **Exhibit B**, which is a true and correct copy of the Court’s October 31,  
15 2023 Order granting BLF’s proposed settlement, marked as **Ex. A**, entitling the  
16 lead plaintiff a \$7,500.00 enhancement, in *Juarez v. Calmet Services, Inc.*, Los  
17 Angeles Superior Court Case No. 21STCV33668.  
18

19                   3.       **Exhibit C**, which is a true and correct copy<sup>2</sup> of the Court’s August 17,  
20 2023 Order granting the BLF’s requested \$5,000 to \$10,000 enhancements to the  
21  
22  
23  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Defendants’ counsel added a highlight on page 28 to draw the reader’s attention  
27 to the relevant section in the Anti-Slapp Defendants’ Reply Brief.

28 <sup>2</sup> Defendants’ counsel added a highlight on page 3 to draw the reader’s attention to  
the relevant section in the Anti-Slapp Defendants’ Reply Brief.

1 plaintiffs in *Hines v. Constellis Integrated Rist Mgmt. Serv.'s*, Los Angeles  
2 Superior Court Case No. 20STCV26962.  
3

4 4. **Exhibit D**, which is a true and correct copy of the Court's December  
5 14, 2023 Minute Order in the Plaintiff's remanded Los Angeles Superior Court  
6 Case, No. 23STCV08761. In this Order, the Court related and consolidated the  
7 Plaintiff's remanded Unfair Competition Law ("UCL") action with the Plaintiff's  
8 separate Private Attorney General Act ("PAGA") action, LASC No.  
9 23STCV16142, and took all motions off calendar until preliminary issues of fact  
10 are resolved in this Court to conserve judicial resources and avoid collateral  
11 estoppel issues.  
12  
13  
14  
15

16 Dated: December 22, 2023

Respectfully submitted,

KANE LAW FIRM

17 By: /s/ Brad S. Kane

18 Brad Kane

19 Eric Clopper

20 Attorneys for Defendants

21 VXN Group LLC; Strike 3 Holdings,  
22 LLC; General Media Systems, LLC;  
23 and Mike Miller  
24  
25  
26  
27  
28

Exhibit A

Electronically FILED by Superior Court of California, County of Los Angeles on 03/22/2023 04:48 PM David W. Slayton, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

**BIBIYAN LAW GROUP, P.C.**  
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Tel: (310) 438-5555; Fax: (310) 300-1705  
Attorneys for Plaintiff, GENARO JUAREZ,  
on behalf of himself and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE**

GENARO JUAREZ, an individual, and on  
behalf of all others similarly situated,

Plaintiff,

v.

CALMET SERVICES, INC., a California  
corporation; CALMET PROPERTIES, LLC, a  
California limited liability company; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV33668

[Assigned to the Hon. Kenneth R. Freeman  
in Dept. 14]

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS AND  
REPRESENTATIVE ACTION  
SETTLEMENT AND PROVISIONAL  
CLASS CERTIFICATION FOR  
SETTLEMENT PURPOSES ONLY;  
DECLARATIONS OF DAVID D.  
BIBIYAN, VEDANG J. PATEL, AND  
PLAINTIFF IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: September 12, 2023  
TIME: 10:00 a.m.  
DEPT: 14

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on September 12, 2023 at 10:00 a.m., or as soon thereafter as they may be heard in Department 14 of the Superior Court of the State of California for the County of Los Angeles, Spring Street Courthouse, plaintiff Genaro Juarez (“Plaintiff”) on behalf of himself and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class (“Settlement Class” or “Settlement Class Members or “Class Members”) for the purpose of settlement only: all current and former non-exempt, hourly-paid employees who worked in California for Calmet Services, Inc., and Calmet Properties, LLC, (collectively, “Defendants”) at any time during the period from September 13, 2017 through April 1, 2022 (“Class Period”).

2. Preliminarily approving the representative Plaintiff as Class Representative.

3. Preliminary approving David D. Bibiyan of Bibiyan Law Group, P.C., as Class Counsel.

4. Preliminarily approving the settlement claims under the terms set forth in the Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement,” “Agreement” or “Settlement Agreement”).<sup>1</sup>

5. Preliminarily approving payment of the Gross Settlement Amount of \$650,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Class Notice submitted herewith.

7. Appointing ILYM Group, Inc. (“ILYM”) to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the payment of \$9,650.00 for settlement administration to ILYM from the Gross Settlement Amount.

9. Preliminarily approving service award of \$7,500.00 to Plaintiff in consideration for Plaintiff’s extensive efforts in prosecuting this case.

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<sup>1</sup> A true and correct copy of the Settlement Agreement is attached with its exhibit(s) as Exhibit 1 to the Declaration of Vedang J. Patel (“Patel Decl.”) for the Court’s convenience.

1 10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the  
2 amount of thirty-five (35%) of the Gross Settlement Amount which, unless escalated pursuant to  
3 the Settlement Agreement, amounts to \$227,500.00.

4 11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according  
5 to proof, not to exceed \$25,000.00.

6 12. Preliminarily approving PAGA penalties in the amount of \$20,000.00, seventy-five percent  
7 (75%) or \$15,000.00 of which will be paid to the Labor and Workforce Development Agency  
8 ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or \$5,000.00 of  
9 which will be distributed to Aggrieved Employees, defined as Class Members working for  
10 Defendants during the period from September 13, 2020 through April 1, 2022 ("PAGA Period") as  
11 non-exempt, hourly-paid employees in California; and

12 13. Entering an Order preliminarily approving the Settlement consistent with the terms of the  
13 Settlement Agreement.

14 Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable,  
15 and adequate.

16 This Motion will be based on this Notice of Motion, the Memorandum of Points and  
17 Authorities filed herewith, the Declarations of David D. Bibiyan, Vedang J. Patel, and Plaintiff, ,  
18 exhibits attached thereto, arguments of counsel and upon such other materials contained in the file  
19 and pleadings of this action.

20  
21 Dated: March 22, 2023

BIBIYAN LAW GROUP, P.C.

22  
23 *Vedang J. Patel*

24 DAVID D. BIBIYAN  
VEDANG J. PATEL  
IONA LEVIN

25 Attorneys for Plaintiff, GENARO JUAREZ, on  
26 behalf of himself and all others similarly situated  
27 and aggrieved  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiff Genaro Juarez (“Plaintiff”), on behalf of himself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the proposed Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement,” “Agreement” or “Settlement Agreement”) upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Vedang J. Patel as Exhibit “1.”

On September 13, 2021, Plaintiff filed with the LWDA and served on Defendants a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations. (“PAGA Notice”).

Also, on September 13, 2021, Plaintiff filed a putative wage-and-hour class action alleging that, during the Class Period, Defendants, as it pertains to Class Members: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6) failed to timely pay wages; (7) failed to pay vested vacation time; (8) failed to issue accurate and compliant wage statements; and (9) engaged in unfair competition (the “Class Action”).

On or about November 12, 2021, Defendants removed the Class Action to the Central District of California, asserting that federal preemption applied by virtue of Collective Bargaining Agreements (“CBAs”) governing the claims. Plaintiff filed a Motion for Remand, which was denied on the basis that Plaintiff’s overtime claim is preempted by Section 301 of the Labor Management Relations Act (“LMRA”). Defendants filed a Motion for Judgment on the Pleadings, which the Court converted into a Rule 56 Motion for Summary Judgment (“Summary Judgment Motion”). As part of the Summary Judgment Motion, Defendants contended that they were entitled to a judgment on Plaintiff’s overtime pay, meal periods, timely wages under Labor Code section 204, and vested vacation pay under Labor Code section 227.3, by virtue of LMRA preemption. Defendants also argued that the wage statement and waiting time penalty claims are derivative of the overtime claim

1 and thus preempted, as well.

2 The Summary Judgment Motion was granted in part and denied in part. The Court ruled that  
3 the LMRA preempted the overtime claim, meal break claim, and failure to timely pay wages under  
4 Labor Code section 204 claim, and granted judgment against Plaintiff on those issues. The Court  
5 remanded the remaining minimum wage claim, rest break claim, vacation claim under Labor Code  
6 section 227.3, claims for waiting time penalties, wage statement violations, and unfair competition  
7 back to the State Court in which it was filed.

8 On November 17, 2021, after sixty-five (65) days had passed since Plaintiff filed and served  
9 the PAGA Notice, without any action by the LWDA with respect to the alleged Labor Code  
10 violations, Plaintiff filed a separate representative action seeking PAGA civil penalties against  
11 Defendants for the Labor Code violations alleged in the PAGA Notice (the “PAGA Action”).

12 Thereafter, the Parties exchanged formal and informal discovery and attended a mediation,  
13 in which Plaintiff was provided with, among other things: (1) a sampling of time and payroll records  
14 for one third (1/3) of the estimated 191 putative class members; (2) hire dates, termination dates and  
15 final rates of pay for one-third (1/3) of putative class members; (3) contact information for all  
16 putative class members; (4) Plaintiff’s complete personnel file; (4) samples of paper logs used by  
17 putative class members effectuating work duties outside of Defendants’ facilities; (5) Defendant  
18 Calmet Services’ 2017 and 2018 employee handbooks; and (6) a collective bargaining agreement  
19 (“CBA”) dated October 1, 2017 through September 30, 2022 (“2017 CBA”).

20 On October 5, 2022, the Parties participated in a full-day mediation before Mark Rudy,  
21 Esquire, a well-regarded mediator experienced in mediating complex labor and employment  
22 matters. With the aid of the mediator’s evaluation and proposal, the Parties reached the Settlement  
23 to resolve the Action. As part of the Agreement, the Parties agreed to stipulate to Plaintiff filing a  
24 First Amended Complaint in the Class Action, and dismiss the PAGA Action without prejudice,  
25 thereby effectively consolidating the Class Action and PAGA Action, as further set out below  
26 (hereinafter, the “Action”). The stipulation is filed concurrently with this motion.

27 The Parties had strong positions at mediation regarding the certifiability of Plaintiff’s  
28 claims, the merits thereof, the manageability of a trial, and the likelihood of recovering civil

1 penalties for aggrieved employees. Nevertheless, the Parties concluded, after considering the  
2 sharply disputed factual and legal issues involved in this Litigation, the risks associated with  
3 further prosecution, and the substantial benefits to be received pursuant to the compromise and  
4 settlement of the Action as set forth in the Settlement Agreement, that settlement on the terms set  
5 forth herein is in the best interest of Plaintiff, putative class members, aggrieved employees, and  
6 Defendants, and is fair, reasonable, and adequate.

7 **II. THE SETTLEMENT**

8 Subject to Court approval pursuant to Code of Civil Procedure section 382 and California  
9 Rules of Court, rule 3.679, *et seq.*, the Parties have agreed to settle the Action by agreement upon  
10 the terms and conditions, and for the consideration set forth in the Settlement Agreement, a copy  
11 of which is attached to the Declaration of Vedang J. Patel as Exhibit “1” thereto. A summary of  
12 the terms of the settlement are as follows:

13 Defendants will stipulate, for purpose of this settlement only, as follows:

- 14 • Certification of a class (“Settlement Class,” “Settlement Class Members” or  
15 “Class Members”) defined as: all current and former non-exempt, hourly-paid  
16 employees who worked in California for Calmet Services, Inc., and Calmet  
17 Properties, LLC, (collectively, “Defendants”) at any time during the period from  
18 September 13, 2017 through April 1, 2022 (“Class Period”).
- 19 • Defendants will pay \$650,000.00<sup>2</sup> (“Gross Settlement Amount”) to resolve the  
20 matter.
- 21 • Defendants will pay the employer’s share of taxes separate and apart from the  
22 Gross Settlement Amount.
- 23 • This is a non-reversionary settlement.

24 \_\_\_\_\_  
25 <sup>2</sup> The Gross Settlement amount is based on Defendants’ representation that there are no more than 32,000 Workweeks  
26 worked during the Class Period. In the event that it is determined that the number of Workweeks worked by Class  
27 Members during the Class Period increases by more than 10%, or 3,200 Workweeks, then the Gross Settlement  
28 Amount shall be increased proportionally by the Workweeks in excess of 35,200 Workweeks multiplied by the  
Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement  
Amount (\$650,000.00) by 32,000, which amounts to a Workweek Value of \$20.31. Thus, for example, should there  
be 36,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$16,248.00.  
((36,000 Workweeks – 35,200 Workweeks) x \$20.31 per Workweek.).

- 1 • Class Members will be paid their *pro rata* share of the class action settlement  
2 based on the total number of Workweeks<sup>3</sup> worked during the Class Period.
- 3 • The Settlement Administration costs, estimated not to exceed \$9,650.00, will  
4 be paid out of the Gross Settlement Amount.
- 5 • Class Counsel, comprised of David D. Bibiyan and Jeffrey C. Bils of Bibiyan  
6 Law Group, P.C., will apply for, and Defendants will not oppose, attorneys’  
7 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which,  
8 unless escalated pursuant to the Settlement Agreement, amounts to  
9 \$227,500.00, and actual costs, not to exceed \$25,000.00, all of which will be  
10 paid out of the Gross Settlement Amount.
- 11 • Class Counsel will apply for, and Defendants will not oppose, a service award  
12 of \$7,500.00 for the Class Representative, which will be paid out of the Gross  
13 Settlement Amount.
- 14 • The “PAGA Period” means the period from September 13, 2020 through the end  
15 of the Class Period.
- 16 • “Aggrieved Employees” means Class Members working for Defendants during  
17 the PAGA Period as non-exempt, hourly-paid employees in California.
- 18 • Defendants have agreed to pay \$20,000.00 as PAGA penalties, seventy-five  
19 percent (75%) or \$15,000.00 of which will be paid to the LWDA out of the  
20 Gross Settlement Amount, and twenty-five percent (25%) or \$5,000.00 of  
21 which will be distributed to Aggrieved Employees.
- 22 • Checks to Class Members and Aggrieved Employees shall remain valid and  
23 negotiable for one hundred eighty (180) calendar days after the date of their  
24 issuance. Within seven (7) calendar days after expiration of the 180-day period,  
25  
26

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27 <sup>3</sup> “Workweeks” means the number of weeks that a Settlement Class Member was employed by and worked for the  
28 Defendants in a non-exempt, hourly-paid position during the Class Period in California, based on hire dates, re-hire  
dates (as applicable), and termination dates (as applicable).

1 checks for such payments shall be canceled and funds associated with such  
2 checks shall be transmitted to the California Unclaimed Property Fund.

3 **III. THE TWO-STEP APPROVAL PROCESS**

4 Any settlement of class litigation must be reviewed and approved by the Court. This is  
5 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after  
6 notice has been distributed to the class members for their comment or objections. The Manual for  
7 Complex Litigation Second states at section 30.44:

8 A two-step process is followed when considering class settlements... if the  
9 proposed settlement appears to be the product of serious, informed, non-  
10 collusive negotiations, has no obvious deficiencies, does not improperly grant  
11 preferential treatment to class representative or segments of the class, and falls  
12 within the range of possible approval, then the court should direct that notice be  
13 given to the class members of a formal fairness hearing, at which evidence may  
14 be presented in support of and in opposition to the settlement.  
15 (*Id.* at § 10 (1985).)

16 Thus, the preliminary approval of the trial court is simply a conditional finding that the  
17 settlement appears to be within the range of the acceptable settlements. As class action Professor  
18 Herbert B. Newberg comments, “[t]he strength of the findings made by a judge at a preliminary  
19 hearing or conference concerning a tentative settlement proposal may vary. The court may find  
20 that the settlement proposal contains some merit, is within the range of reasonableness required  
21 for a settlement offer or is presumptively valid subject only to any objections that may be raised  
22 at a final hearing.” (4 Conte & Newberg, Newberg on Class Actions [“Newberg on Class  
23 Actions”], § 11.26 (4<sup>th</sup> Ed. 2002).)

24 The procedures for submission of a proposed settlement for preliminary approval is  
25 discussed at section 11.24 through 11.26 of Newberg on Class Actions. Newberg observes at  
26 section 11.24:

27 When the parties to an action reach a monetary settlement, they will usually  
28 prepare and execute a joint stipulation of settlement, which is submitted to the  
court for preliminary approval. The stipulation should set forth the central terms  
of the agreement, including but not limited to, the amount of the settlement,  
form of payment, manner of determining the effective date of settlement, and  
any recapture clause.

The Settlement Agreement in this case is fair, reasonable and in the best interest of Class

1 Members.

2 **IV. THE PRESUMPTION OF FAIRNESS**

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless  
4 evidence to the contrary is offered. In short, there is a presumption that the negotiations were  
5 conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen “Clean Diesel”*  
6 *Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-  
7 cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9<sup>th</sup> Cir. 1990) 913 F.2d 576, 580.)  
8 Courts do not substitute their judgment for that of the proponents, particularly where, as here,  
9 settlement has been reached with the participation of experienced counsel familiar with the  
10 litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093, citing Newberg on Class  
11 Actions, § 11.44, p. 457 and *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471; *In re Ikon*  
12 *Office Solutions, Inc. Securities Litigation* (E.D. Pa. 2002) 209 F.R.D. 94, 104, citing *Sommers v.*  
13 *Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571, 576.)

14 While the recommendations of counsel proposing the settlement are not conclusive, the Court  
15 can properly take them into account, particularly where, as here, they have been involved in litigation  
16 for some period of time, appear to be competent, have experience with this type of litigation, and  
17 have obtained substantial data from the opposing party. (*See* Newberg on Class Actions, § 11.47.)

18 In this Litigation, the Settlement was reached after discussions between Class Counsel,  
19 extensive factual and legal research, formal and informal discovery, an exchange of data points, time  
20 and payroll records, a review and analysis of time and payroll records with Plaintiff and expert  
21 consultants, preparation of damages analyses with the aid of expert consultants, and a full-day  
22 mediation session with a mediator experienced in mediating complex labor and employment matters.  
23 The Settlement that has been reached, subject to this Court’s approval, is the product of substantial  
24 effort and expense by the Parties and their counsel. The settlement amount is, of course, a  
25 compromise figure. However, counsels for the Parties are satisfied that this figure is reasonable in  
26 light of the risks and expense of continued litigation.

27 ///

28 ///

1           **V. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

2           A notice of settlement of a class action “must contain an explanation of the proposed  
3 settlement and procedures for class members to follow in filing written objections to it and in  
4 arranging to appear at the settlement hearing and state any objections to the proposed settlement.”  
5 (Cal. Rules of Court, rule 3.769, subd. (f).)

6           Attached to the Declaration of Vedang J. Patel as Exhibit “1” thereto is the Settlement  
7 Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit “A” is the  
8 proposed Notice of Class Action Settlement (“Class Notice”) to be distributed to Class Members in  
9 English and Spanish. The proposed Class Notice satisfies these requirements.

10          The Parties respectfully request that this Court approve the above-referenced Class Notice  
11 and dissemination of the Class Notice to the Class Members, consistent with the manner and timing  
12 as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc.  
13 (“ILYM”), an experienced Settlement Administrator, to administer the settlement. The Parties have  
14 further agreed that the administration costs will be paid out of the Gross Settlement Amount. It is  
15 requested that the Court appoint ILYM to serve as the Settlement Administrator.

16           **VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**  
17           **OBJECTIVE EVIDENCE**

18           **A. The Settlement was Negotiated at Arm’s-Length and is not Collusive**

19          The Settlement that has been reached, subject to this Court’s approval, is a product of  
20 substantial efforts by the Parties and their counsel. The Settlement was reached after extensive  
21 factual and legal investigation and research; formal discovery; substantial negotiation regarding the  
22 scope of informal discovery; an exchange of documents and information that included review of  
23 time and pay records, and analysis thereof with the aid of Plaintiff and expert consultants; an analysis  
24 of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of  
25 pay periods and number of Aggrieved Employees in the PAGA Period for calculating PAGA  
26 penalties, number of Class Members eligible for wage statement penalties and waiting time  
27 penalties; analysis of Plaintiff’s employment records; extensive correspondence and communication  
28 between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere

1 in the state; a review of similar cases in the same industry elsewhere in the country; and preparation  
2 for and attendance at a full-day session of mediation, followed by further negotiations to finalize the  
3 terms and conditions of the general settlement parameters agreed to by the Parties. The settlement  
4 amount is a compromise figure. It considered the risks related to certifiability, liability, and  
5 manageability.

6 Class Counsel assert that the wage and hour claims, and the claims for resulting penalties  
7 would be certified. On the other hand, Class Counsel understand from the mediator and the  
8 mediation process that Defendants argued that Plaintiff cannot meet the requirements of class  
9 certification because any wage discrepancies are not the product of an overarching policy that was  
10 uniformly applied; that Class Members were paid for all hours under Defendants' control, or  
11 otherwise suffered or permitted to work by Defendants; that rest periods were authorized and/or  
12 permitted; that Defendants' rest period policies were compliant; that Defendants did not deter Class  
13 Members from taking rest periods and that Defendants thus provided all pay owed to Class Members  
14 by separation of employment and issued accurate wage statements to Class Members. Defendants  
15 further contend that class certification would not be warranted because individual liability issues  
16 predominate over any class-wide allegations.

17 While Plaintiff believes in the chance of success of certifying the claims, Plaintiff recognized  
18 the potential risk, expense and complexity posed by further litigation. Moreover, litigating  
19 Plaintiff's claims in this Litigation—claims that involve 191 Class Members during the Class  
20 Period—would require substantial preparation and discovery, and ultimately would involve the  
21 deposition and presentation of numerous more witnesses (including Class Members and expert  
22 witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should  
23 litigation have progressed any further, there would have been significant expense incurred by each  
24 side (above and beyond the expense already incurred).

25 In light of the sharply contested legal and factual issues, the risks of continued litigation and  
26 the substantial benefits to Class Members under the Settlement, the terms and conditions of this  
27 class settlement are fair and reasonable to all sides.

28 ///

1                    **B.     The Settlement Amount is Well Within Range of Reasonableness**

2            The settlement amount reached in this case provides significant recovery to Class Members  
3 and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents  
4 and information provided by Defendants, Class Counsel understand there was approximately a total  
5 of 32,000 Workweeks.

6                    **1.     Unpaid Minimum Wages for Failure to Pay Off-the-Clock Work**

7            Class Counsel advanced theories at mediation that Defendants failed to pay all minimum  
8 wages due to Plaintiff and Class Members because Defendants failed to accurately record all time  
9 worked by Plaintiff and Class Members, and required Plaintiff and Class Members to perform off-  
10 the-clock work. Specifically, Defendants failed to pay all minimum wages due to Plaintiff and Class  
11 Members because: (1) Defendants required Plaintiff and Class Members to attend to pre-shift  
12 company meetings without pay, Plaintiff and Class Members were required to wait in line to clock  
13 in for their shifts, and were subject to temperature checks for COVID-19 screening off-the-clock;  
14 and (2) Defendants rounded off the time entries to the detriment of Plaintiff and Class Members.

15                    a.     Off-the-Clock Work

16            Class Counsel theorized, based on narrative evidence of Plaintiff, that Defendants failed  
17 to pay all minimum wages due to Plaintiff and Class Members because Plaintiff and Class  
18 Members spent time off-the-clock under Defendant's control, including, without limitation,  
19 attending to mandatory pre-shift company meetings, undergoing temperature checks for COVID-  
20 19 screening during COVID-19 pandemic, and waiting in line to clock in for their shifts, all  
21 without pay. Class Counsel understand, based on narrative evidence of Plaintiff and Class  
22 Members, that there were approximately 80 to 100 Class Members who would be working within  
23 the same shift, and all waiting in line to undergo temperature checks for COVID-19 screening  
24 during COVID-19 pandemic and to clock in for their shifts. Class Counsel theorized that this was  
25 due to an insufficient number of thermometers and timeclocks as Defendants provided only one  
26 (1) thermometer and one (1) timeclock in their facility. Moreover, Class Counsel theorized, based  
27 on the narrative evidence of Plaintiff and Class Members that, that once or twice a month  
28

1 Defendants required Class Members to attend to pre-shift company meetings, without pay, to  
2 discuss objectives and tasks.

3 Based on the foregoing, Class Counsel advanced a theory at mediation that Plaintiff and  
4 Class Members worked off-the-clock for approximately 14 minutes for each shift during the Class  
5 Period. Class Counsel understand, based on time and payroll records produced by Defendants that  
6 there were approximately 165,457 shifts during the Class Period and Class Members had an  
7 average hourly rate of pay of \$22.99. Thus, one calculation performed by Class Counsel at  
8 mediation resulted in **Defendant's exposure for unpaid off-the-clock work in the amount of**  
9 **\$874,887** (165,457 shifts x .23 hour x \$22.99).

10 Class Counsel understand from the mediator and the mediation process that Defendants  
11 make the following defenses in connection with this claim: Defendants contend that their policies  
12 specifically prohibit off-the-clock work. Defendants contend that it did not require Class Members  
13 to work off-the-clock and, rather, they were paid for all time suffered or permitted to work.  
14 Defendants assert that it provided a sufficient number of timeclocks at its facility, and Class  
15 Members would not have been required to wait in line before their shifts. Defendants further contend  
16 that temperature checks and COVID health screens were not compensable time pursuant to *Frlekin*  
17 *v. Apple Inc.* (2020) 8 Cal.5th 1038 because a Court must consider whether the time spent is for the  
18 benefit of the employee or the employer, and that the temperature checks were being performed for  
19 the safety of employees, not for the benefit of Defendants. Defendant contend that the time it took  
20 to go through Covid-19 protocols was *de minimis* and that temperature checks were only in place  
21 during a portion of the Class Period. Moreover, Defendants contend that any allegations that Class  
22 Members were required to wait in line or otherwise be under Defendants' control off-the-clock  
23 would necessitate an individualized inquiry into when and why, making this claim not subject to  
24 class treatment and any trial in this Litigation unmanageable. Finally, Defendants contend that,  
25 because most shifts worked by Class Members during the Class Period were over eight (8) hours,  
26 the off-the-clock work detailed above resulted in a failure to pay overtime pay, which was already  
27 decided upon in Federal Court against Plaintiff, and not failure to pay minimum wages. Thus,  
28 Defendants contend that no damages can be recovered here, and, even if, *arguendo*, they could, an

1 estimate of 14 minutes unpaid for every single shift worked by Class Members during the Class  
2 Period is a wild exaggeration of time spent working off-the-clock if *any* such time was spent.

3 b. Detrimental Rounding

4 Class Counsel theorized that Defendants rounded Class Members' time worked to their  
5 detriment. Class Counsel theorized, based on the time and pay records produced by Defendants  
6 and expert analysis thereof, that Defendants ultimately underpaid Class Members by 176.9 hours,  
7 and that Class Members had an average hourly rate of pay of \$22.99. Thus, one calculation  
8 performed by Class Counsel at mediation resulted in **Defendants' exposure for detrimental**  
9 **rounding in the amount of \$8,134** (176.9 hours x \$22.99/hour x 2 in liquidated damages).

10 Class Counsel understands from the mediator and mediation process that Defendants  
11 defend that their rounding practice was neutral on its face as it resulted in roughly equal amounts  
12 of overpaid and underpaid shifts. Thus, Defendants took the position that its rounding practice  
13 was legal and results in no damages.

14 **2. Recovery of Damages for Non-Compliant Rest Periods**

15 Class Counsel theorized at mediation, based on relevant documents produced by Defendants  
16 and narrative evidence of Plaintiff and Class Members, that Defendants' rest period policies and  
17 practices throughout the Class Period were non-compliant. Defendants' employee handbooks and  
18 CBAs did not state when rest periods may be taken, did not state whether rest periods may just be  
19 taken by the employees or should be authorized by their respective supervisors, did not state whether  
20 rest periods must be recorded and how these must be recorded; did not state that employees can  
21 leave the premises during rest periods; and did not state that the rest periods are duty-free and  
22 uninterrupted. On the other hand, the 2017 and 2018 employee handbooks state that "rest periods  
23 are paid and hourly employees should not clock out for a rest period."

24 Class Counsel theorized at mediation, based on narrative evidence of Plaintiff and Class  
25 Members, that, in practice, Defendants' rest periods were also non-compliant. Class Counsel  
26 theorized, based on narrative evidence of Plaintiff and Class Members, that many rest periods were  
27 not provided because supervisors would instruct Class Members not to take rests due to the heavy  
28 workload that had to be completed within their shifts. Class Counsel understand, based on narrative

1 evidence of Plaintiff and Class Members that Class Members who were not working within  
2 Defendants' facility were required by Defendants to mark down in logs that they were afforded with  
3 timely, full and uninterrupted rest periods, though that was not the case.

4 Class Counsel theorized, based on time and payroll records produced by Defendants and  
5 expert analysis thereof, that there were 164,762 shifts over 3.5 hours worked by Class Members  
6 during the Class Period. Notably, a review of payroll records produced by Defendants reflects that  
7 no rest period premiums were ever issued during the Class Period.

8 Thus, one calculation performed by Class Counsel at mediation resulted in, assuming a 40%  
9 violation rate for rest-eligible shifts, **Defendants' exposure for failure to provide compliant rest**  
10 **periods in a conservative amount of \$1,515,131** (164,762 shifts x .40 violation rate x \$22.99/hour).

### 11 3. Wage Statement Violations

12 Class Counsel theorized that Class Members are entitled to recover penalties for  
13 Defendants' alleged failure to issue compliant wage statements under Labor Code section 226,  
14 subdivision (e), for the derivative impact of the failure to pay all wages owed on providing  
15 accurate information on wage statements. Specifically, Class Counsel theorized that penalties are  
16 owed under Labor Code section 226 due to, at minimum, Defendants': (1) failure to pay wages  
17 for all hours worked; and (2) failure to pay premium wages. A non-exempt employee suffering  
18 injury as a result of a knowing and intentional failure by an employer to comply with Labor Code  
19 section 226, subdivision (a), is entitled to recover the greater of all actual damages or fifty dollars  
20 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per  
21 employee for each violation in a subsequent pay period.

22 Class Counsel understand from the data provided by Defendants that there were 13,398 pay  
23 periods during the relevant statutory time period for Class Members. If, in fact, Class Members  
24 worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every  
25 wage statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus,  
26 **Defendants' maximum exposure for wage statement violations would be \$1,339,800** (13,398  
27 pay periods x \$100/pay period.)  
28

1 Class Counsel understand from the mediator and the mediation process that Defendants  
2 make the following defenses in connection with this claim: Defendants contend that the wage  
3 statements issued to the employees fully complied with Labor Code section 226. Defendants  
4 contend that because they believe no wages are unpaid that, thus, there can be no derivative  
5 penalties.

6 At the time of mediation, Defendants further defended that even if there were, *arguendo*,  
7 derivative penalties, that Plaintiff suffered no injury, citing *Maldonado v. Epsilon Plastics, Inc.*  
8 (2018) 22 Cal.App.5th 1308 [*Maldonado*]. In that case, the Court noted that “inaccurate wage  
9 statements alone do not justify penalties; the plaintiffs must establish injury flowing from the  
10 inaccuracy.” The Court therein rejected the position of plaintiffs in that matter that “*any* failure to  
11 pay overtime at the appropriate rate *also* generates a wage statement injury justifying the  
12 imposition of wage statements...” At the time of mediation, Defendants further cited *Naranjo v.*  
13 *Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 [*Naranjo*] for the proposition that no  
14 derivative wage statement violation exists for failure to pay for meal and rest period premiums.

15 Defendants once again defended that no unpaid wages are owed as Defendants did not fail  
16 to pay for all hours worked. Defendants also point out that Class Counsel’s calculation neither  
17 takes into account that the first pay period merits only a \$50 instead of a \$100 violation rate. At  
18 the time of mediation, Defendants further defended that no waiting time penalties are owed for  
19 unpaid premium under *Naranjo*.

20 Class Counsel note that California Supreme Court recently overruled the California Court  
21 of Appeal’s decision in *Naranjo* and ruled that employer can be liable for derivative wage  
22 statement violations for failure to pay meal and rest period premiums (*See Naranjo v. Spectrum*  
23 *Security Services, Inc.* (2022) 13 Cal. 5th 93, [509, P.3d 956, 969]). Class Counsel further note  
24 that, to the extent *Maldonado* is still good law after the Court’s ruling in *Naranjo*, the Court in  
25 *Maldonado* suggests that failure to account for all time worked may, in fact, constitute an injury,  
26 and thus does not find the defense meritorious as to Class Counsel’s argument.

27 However, Class Counsel also understand the risks inherent in this claim should Plaintiff’s  
28 failure to pay wages claims not be certified. Class Counsel also had to factor in, and did factor in,

1 the risk that a Court would find there was no injury to Class Members even if the wage statements  
2 were inaccurate or that Defendants' conduct was not intentional, both of which are requirements  
3 of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation  
4 used does not take into account the first pay period violation only being \$50 and the fact that all  
5 Class Members did not work all pay periods and therefore do not qualify for the maximum penalty  
6 of \$4,000 as calculated in Plaintiff's exposure model used at mediation.

#### 7                                   4.       Waiting Time Penalties

8           Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory  
9 period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of  
10 wages as waiting time penalty for not being paid all wages due upon separation of employment.  
11 Class Counsel theorized at mediation, based on relevant documents provided by Defendants, that,  
12 under Labor Code section 203, Defendants are liable to pay each Class Member, who was terminated  
13 during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure  
14 to pay wages for off-the-clock work, failure to pay compensation in lieu of compliant rest periods,  
15 and failure to timely pay all wages due at the time of termination or resignation.

16           Based on relevant documents provided by Defendants, there were approximately 64 Class  
17 Members who were terminated or resigned during the relevant statutory period. Class Counsel  
18 understand from these documents that, after termination or resignation, Class Members received  
19 their last wages belatedly. Class Counsel theorized that this this widespread practice of Defendants  
20 results in their systematic and direct violation of Labor Code sections 201, 202 and 203.

21           Thus, one calculation performed at mediation by Class Counsel resulted in **Defendants'**  
22 **maximum exposure for waiting time penalties to be \$353,126** (64 Class Members terminated  
23 from Defendants x 8 hours x 30 days x \$22.99/hour).

24           Class Counsel understand from the mediator and the mediation process that Defendants  
25 contend that there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time  
26 penalties are owed based on that theory. Defendants further defend that failure to pay premium  
27 pay is not a basis for waiting time penalties to issue, citing *Naranjo* again. Finally, Defendants  
28

1 contend that their actions were not “willful” and that, thus, waiting time penalties cannot be  
2 awarded. Thus, Defendants argue that no waiting time penalties are owed.

3 **5. Unpaid Vested Vacation Time**

4 Class Counsel had initially theorized Defendants failed to pay all accrued vacation for  
5 Class Members upon separation from employment. However, after investigation and discovery,  
6 Class Counsel did not attribute a significant amount in damages to this claim at mediation.

7 **7. PAGA Penalties**

8 Class Counsel understand from the time and payroll data provided by Defendants that there  
9 were 13,398 pay periods in the PAGA Period. Plaintiff’s claims in the Action under PAGA are  
10 substantially similar to those described herein, except Class Counsel also advanced a theory that  
11 Defendant failed to comply with the notice requirements of Labor Code Section 2810.5.

12 PAGA penalties include penalties for initial violations and subsequent violations.  
13 Defendants contend that only initial violation rates may be used instead of the subsequent violation  
14 rates initially used by Class Counsel. Specifically, Defendants contend that until “notified that it  
15 is violating a Labor Code provision... the employer cannot be presumed to be aware that its  
16 continuing underpayment of employees is a “violation” subject to penalties.” (*Amaral v. Cintas*  
17 *Corp. No. 2 [Amaral]* (2008) 163 Cal. App. 4th 1157, 1209.) Thus, Defendants contend that  
18 subsequent violations in the PAGA context means not just later in time but following notice to the  
19 employer that it is in violation of the Labor Code. With this in mind and because Class Counsel  
20 through investigation and discovery did not come to the conclusion that Defendants at any time  
21 was notified by any governmental entity that they violated any Labor Code sections presented in  
22 the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendants  
23 to include only initial violation rates.

24 While Class Counsel are informed and believe that reasonable minds differ with regard to  
25 calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendants’  
26 maximum exposure in PAGA penalties as follows:

27 a. Overtime Violations: Labor Code section 558 prescribes penalties of \$50 for an  
28 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all

1 violations, and a violation every single pay period for every single non-exempt employee in the  
2 PAGA Period, this amounts to a maximum exposure of \$669,900 (13,398 pay periods x \$50).

3 ///

4 ///

5 b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of  
6 \$100 for an initial violation and \$250 for each subsequent violation. Using the initial pay period  
7 rate for all violations and a violation every single pay period for every single Aggrieved Employee  
8 in the PAGA Period, this amounts to a maximum exposure of \$1,339,800 (13,398 pay periods x  
9 \$100).

10 c. Meal Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
11 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
12 violations and a violation every single pay period for every single non-exempt employee in the  
13 PAGA Period, this amounts to a maximum exposure of \$669,900 (13,398 pay periods x \$50).

14 d. Rest Period Violations: Labor Code section 558 prescribes penalties of \$50 for an  
15 initial violation and \$100 for each subsequent violation. Using the initial pay period rate for all  
16 violations and a violation every single pay period for every single non-exempt employee in the  
17 PAGA Period, this amounts to a maximum exposure of \$669,900 (13,398 pay periods x \$50).

18 e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of \$100 for  
19 an initial violation and \$200 for each subsequent violation. Because this violation is merited only  
20 at separation of employment, a 100% violation rate would likely include just one violation per  
21 employee. The data produced by Defendants indicate that there are 64 Aggrieved Employees  
22 whose employment was separated during the PAGA Period. This amounts to a maximum exposure  
23 of \$6,400 (64 Aggrieved Employees x \$100).

24 f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021)  
25 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty  
26 for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial  
27 violation and \$200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate  
28 for all violations and a violation every single pay period for every single Aggrieved Employee in

1 the PAGA Period, this amounts to a maximum exposure of \$1,339,800 (13,398 pay periods x  
2 \$100).

3 g. Failure to Provide Notice under 2810.5: Upon hire, Defendants must provide each  
4 Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under  
5 that Labor Code section. Labor Code section 2699 prescribes penalties of \$100 for an initial  
6 violation and \$200 for each subsequent violation. Class Counsel understands Defendants to  
7 concede that no such notices were provided. There were, according to the data provided by  
8 Defendants, approximately 180 Aggrieved Employees hired during the PAGA Period. This  
9 amounts to a maximum exposure, using the initial violation rate, of \$18,000. (180 Aggrieved  
10 Employees x \$100.).

11 h. Failure to Pay Vested Vacation Time: Labor Code section 2699 prescribes penalties  
12 of \$100 for an initial violation and \$200 for each subsequent violation. Using the initial pay period  
13 rate for all violations, and a violation every single pay period for every single non-exempt  
14 employee in the Settlement Period, this amounts to a maximum exposure of \$1,339,800 (13,398  
15 pay periods x \$100).

16 i. Conclusion: In sum, Class Counsel calculated Defendants' total maximum  
17 exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved  
18 Employee every pay period and not exercise its discretion to reduce any of those penalties to be  
19 \$6,053,500.

20 Class Counsel understand from the mediator and the mediation process that Defendants  
21 argued the following in connection with this claim: Defendants contend that no PAGA penalties  
22 are likely to be awarded and, even if they were, the maximum exposure calculated by Class  
23 Counsel is vastly overstated. First, Defendants defend that PAGA penalties cannot and should not  
24 be stacked and that, even if they could, very few Courts have ever exercised discretion to stack  
25 them. Second, Defendants assert that individualized issues predominate the PAGA claims, making  
26 the claims unmanageable for trial pursuant to *Wesson v. Staples the Office Superstore, LLC* (2021)  
27 68 Cal.App.5th 746. Third, Defendants deny that a violation for each pay period can be  
28 established. Defendants state that because the PAGA penalties rely upon substantially similar

1 allegations made in the Action, they are subject to the same defenses and, thus, for the same  
2 reason, Defendants believe there will be no damages collectible in the class action and no PAGA  
3 penalties would be awarded. Fourth, Defendants contend that a Court is unlikely to exercise its  
4 discretion to award civil penalties under PAGA where, as here, there is no conduct shown by  
5 Plaintiff that would show any Labor Code violation by Defendants is knowing and intentional that  
6 would justify PAGA penalties. Defendants insist that this is especially true in this Action where  
7 class action damages are available to Class Members, rendering an award of PAGA penalties in  
8 addition to class action damages an unjust, arbitrary, oppressive or confiscatory double recovery.  
9 Thus, Defendants contend that the Court cannot, should not and will not exercise its discretion to  
10 award any penalties under PAGA.

11 Class Counsel maintains that it is possible to recover the subsequent violation rate for  
12 penalties, that stacking is permissible, and that there is no manageability requirement under PAGA  
13 (citing *Estrada v. Royalty Carpet Mills, Inc.*). Class Counsel also understand the risks inherent  
14 should the Court not exercise its discretion to grant any PAGA penalties, in addition to potential  
15 issues on the merits, trial manageability, and issues the possibility that the Court does not use permit  
16 stacking of penalties or permit the use of the subsequent violation rate when providing penalties.  
17 As such, Class Counsel believe a 90% discount of this claim to be reasonable, resulting in a valuation  
18 of **\$605,350** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for  
19 PAGA penalties (\$6,053,500 x .10).

## 20 **8. Conclusion**

21 When including derivative penalties, such as waiting time penalties, wage statement  
22 violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum  
23 exposure to be approximately **\$4,696,428**. However, this maximum exposure did not take into  
24 account all of Defendants' defenses, including, without limitation, that: (1) Defendants' policies  
25 regarding tasks performed off-the-clock, the claim is not certifiable and does not lend itself to a  
26 manageable trial; (2) not all Class Members performed tasks off-the-clock every shift and thus the  
27 damages attributed to this line item are excessive; (3) in light of Defendants' policies regarding  
28 meal period, the claim is not certifiable and does not lend itself to a manageable trial; (4) in light

1 of purported meal period waivers; (5) in light of Defendants' policies regarding rest period, the  
2 claim is not certifiable and does not lend itself to a manageable trial; (5) Plaintiffs' claims for  
3 wage statement and waiting time penalties are derivative of the above-referenced claims and if  
4 those fail, these would fail too; (6) if *Naranjo* was upheld, there would be no derivative wage  
5 statement and waiting time penalties for failure to provide premium pay, thus creating an even  
6 greater risk that derivative penalties never issue; (7) Defendants' failure to pay wages was not  
7 willful and that, thus, no waiting time penalties or wage statement violations are owed; (8) no  
8 injury was suffered by Class Members and, thus, no wage statement violations are owed; (9)  
9 Plaintiffs' calculation of its exposure for PAGA penalties is excessive and unrealistic as it assumes  
10 that the Court will permit the stacking of eight penalties and find that there was a violation every  
11 pay period against each Aggrieved Employee in connection with every theory without any  
12 reduction whatsoever of the maximum penalties sought; and (10) the Court will exercise its  
13 discretion to grant PAGA penalties at all in light of the fact that damages are available in  
14 connection with Plaintiffs' class claims, thus creating double the liability for the same violations  
15 for Defendants.

16 In all, Class Counsel obtained a Gross Settlement Amount of **\$650,000**. Particularly in  
17 light of the risks involving obstacles to class certification, all issues and risks related to liability,  
18 the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering  
19 the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe  
20 that the settlement reached is fair, reasonable and adequate, and in the best interest of Class  
21 Members.

22 Moreover, \$20,000 of the Gross Settlement Amount was attributed to PAGA penalties.  
23 This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the  
24 fact that damages are available for the failure to pay wage claims while only penalties are available  
25 for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack  
26 PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount  
27 of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA  
28

1 penalties at all in light of the fact that damages are available for Class Members and it may find  
2 any further liability against Defendants unnecessarily punitive.

3 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

4 Class Counsel seek an attorneys' fees award of thirty-five percent (35%) of the Gross  
5 Settlement Amount, which, unless escalated pursuant to the Agreement, would amount to  
6 \$227,500.00. Class Counsel also seek reimbursement of costs not to exceed \$25,000.00. The  
7 requested fees fall well within the historical range of attorney's fees awards under the common fund  
8 theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking  
9 complex, risky, expensive and time-consuming litigation on a contingent fee basis. Indeed, extensive  
10 investigation was done before and after litigation began with the help of Plaintiff and consultants that  
11 included detailed review of time and payroll records; months of negotiations between opposing  
12 counsel, as well as discussion of diametrically opposed viewpoints regarding the certifiability of  
13 Plaintiff's claims, the merits of Plaintiff's claims, the manageability of those claims at a class action  
14 or representative action trial, including what settlement terms would be just and proper. Moreover,  
15 significant expense was expended, including filing fees, the utilization of forensic consultants to help  
16 analyze time and payroll records, time spent with Plaintiff by telephone, as well as attending a full-  
17 day mediation session to try to resolve the Litigation, among other things.

18 The California Supreme Court has recently expressly recognized that the awarding of a  
19 percentage of the "common fund" created as a result of the settlement is an appropriate method for  
20 the calculation of an attorneys' fees award in a class action. (*Laffitte v. Robert Half Intern. Inc.*  
21 (2016) 1 Cal.5th 480, 503-504.)

22 The purpose of the common fund/percentage approach is to "spread litigation costs  
23 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire  
24 burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; accord *Laffitte*  
25 *v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 489.) In *Quinn v. State of California* (1995) 15  
26 Cal.3d 162, the California Supreme Court stated that "one who expends attorneys' fees in winning  
27 a suit which creates a fund from which others derive benefits may require those passive beneficiaries  
28 to bear a fair share of the litigation costs." (*Id.* at 167.) Similarly, in *City and County of San Francisco*

1 v. *Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund  
2 doctrine has been applied “consistently in California when an action brought by one party creates a  
3 fund in which other persons are entitled to share.” (*Id.* at 110.) The reasons for applying the common  
4 fund doctrine further include:

5 ///

6 “...fairness to the successful litigant, who might otherwise receive no  
7 benefit because his recovery might be consumed by the expenses; correlative  
8 prevention of an unfair advantage to the others who are entitled to share in the  
9 fund and who should bear their share of the burden of its recovery;  
10 encouragement of the attorney for the successful litigant, who will be more  
11 willing to undertake and diligently prosecute proper litigation for the protection  
12 or recovery of the fund if he is assured that he will be properly and directly  
13 compensated should his efforts be successful.”

14 (*Id.*)

15 The “lodestar method,” which focuses on the amount of work done, is the alternative method  
16 for determining attorney fee awards. (*Lafitte v. Robert Half Intern Inc.* (2016) 1 Cal.5th 480, 489.)  
17 Several courts have expressed frustration with the alternative “lodestar” approach for deciding fee  
18 awards, which usually involves wading through voluminous and often indecipherable time records.  
19 Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision*  
20 *Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373:

21 “This court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit  
22 analysis, the answer would be a resounding, ‘No!’ Not only do the *Lindy Kerr-*  
23 *Johnson* analyses consume an undue amount of court time with little resulting  
24 advantage to anyone, but in fact, it may be to the detriment of the class members.  
25 They are forced to wait until the court has done a thorough, conscientious analysis  
26 of the attorneys’ fee petition. Or, class members may suffer a further diminution  
27 of their fund when a special master is retained and paid from the fund. Most  
28 important, however, is the effect the process has on the litigation and the timing of  
settlement. Where attorneys must depend on a lodestar approach, there is little  
incentive to arrive at an early settlement.”

(*Id.* at 1375.)

29 The percentage approach is preferable to the lodestar because: (1) it aligns the interests of  
30 class counsel and absent class members; (2) it encourages efficient resolution of the litigation by  
31 providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on  
32 judicial resources. (*Id.* at 1378-79.)

1 This was reaffirmed in 2016 by the California Supreme Court, as well. The California  
2 Supreme Court noted that “[c]urrently, all the circuit courts either mandate or allow their district  
3 courts to use the percentage method in common fund cases; none require sole use of the lodestar  
4 method.” (*Lafitte v. Robert Half Intern Inc.* (2016) 1 Cal.5th 480, 493, citations omitted.) It further  
5 noted that “the Third Circuit itself holds that while both methods of calculating a fee may be used,  
6 the percentage-of-recovery method is generally favored in common fund cases because it allows  
7 courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for  
8 failure.” (*Id.*, citing *In re Rite Aid Corp. Securities Litigation* (3rd Cir. 2005) 396 F.3d 294, 300,  
9 quotations omitted.) And, as the California Supreme Court stated, “[m]ost state courts to consider  
10 the question in recent decades have also concluded the percentage method of calculating a fee award  
11 is either preferred or within the trial court’s discretion in a common fund case.” (*Id.* at 494.)

12 The California Supreme Court noted that even “[t]he American Law Institute has also  
13 endorsed the percentage method’s use in common fund cases, with the lodestar method reserved  
14 mainly for awards under fee shifting statutes where the percentage method cannot be applied or  
15 would be unfair due to specific circumstances of the case. (*Id.*, citing ALI, Principles of the Law of  
16 Aggregate Litigation (2010) § 3.13.) It continued:

17 “Although many courts in common-fund cases permit use of either a percentage-  
18 of-the-fund approach or a lodestar (number of hours multiplied by a reasonable  
19 hourly rate), most courts and commentators now believe that the percentage  
20 method is superior. Critics of the lodestar method note, for example, the difficulty  
21 in applying the method and cite the undesirable incentives created by that  
22 approach—i.e., a financial incentive to extend the litigation so that the attorneys  
can accrue additional hours (and thus, additional fees). Moreover, some courts  
and commentators have criticized the lodestar method because it gives counsel  
less of an incentive to maximize the recovery of the class.”

23 (*Id.*, citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13, com. b.)

24 While the percentage method has been generally approved in common fund cases, courts  
25 have sought to ensure the percentage fee is reasonable...” (*Id.* at 495, citations omitted.) Notably,  
26 one-third of the common fund was the exact amount requested by class counsel in *Lafitte v. Robert*  
27 *Half Intern. Inc.* (2016) 1 Cal.5th 480. (*Id.* at 486.) In that case, the trial court rejected the one-third  
28 common fund award and was reversed by the California Supreme Court who determined that the

1 trial court erred by not approving one-third of the common fund as class counsel's attorneys' fees  
2 award. (*See Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 485-486, 506.)

3 This is also in line with attorney fee awards historically awarded in common fund cases.  
4 Specifically, historically, courts have awarded percentage fees in the range of 20% to 50%,  
5 depending on the circumstances of the case. (Newberg on Class Actions, § 14.03; *In re Activision*  
6 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378.) According to Newberg on Class  
7 Actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund."  
8 Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order  
9 to assure that the fees do not consume a disproportionate part of the recovery obtained for the class,  
10 although somewhat larger percentages are not unprecedented." (Newberg on Class Actions, § 14.03.)  
11 Newberg on Class Actions further notes: "achievement of a substantial recovery with modest hours  
12 expended should not be penalized but should be rewarded for considerations of time saved by  
13 superior services performed." (*Id.* at § 14.01, p. 14-10:14-11.)

14 Class Counsel have borne and continue to bear the entire risks and costs of litigation  
15 associated with this class action and representative action on a purely contingency basis. The factual  
16 and legal issues posed in this case were evolving and difficult. Class Counsel has easily already  
17 expended hundreds of hours on this matter, including:

- 18 • The investigation of the matter, including meeting with Plaintiff, reviewing  
19 policies, Plaintiff's time and pay records, Plaintiff's personnel file and exploring  
20 Defendants' corporate structure;
  - 21 • Filing and serving initial pleadings in the Class Action, as well as the First  
22 Amended Complaint in the Action;
  - 23 • Filing and serving of the PAGA Notice;
  - 24 • Compliance with prerequisites in connection with Plaintiff's cause of action  
25 under PAGA;
  - 26 • Filing and serving a separate PAGA Action;
- 27  
28

- 1 • Preparing notices, meeting and conferring with counsel for Defendants to
- 2 prepare joint reports and discussing the matter in big picture early on in the
- 3 Litigation;
- 4 • Preparation of a Motion to Remand in Federal Court;
- 5 • Opposing Defendants' Motion for Summary Judgment;
- 6 • Discussing the potential merits of mediation, as well as negotiating the
- 7 parameters thereof and the informal discovery to be exchanged beforehand,
- 8 which involved various iterations of written correspondence back and forth and
- 9 several telephone discussions between counsel regarding the potential scope of
- 10 discovery, as well as the scope of the pleadings;
- 11 • Creating a questionnaire and obtaining responses from Class Members to the
- 12 questionnaire;
- 13 • Obtaining and reviewing formal and informal discovery;
- 14 • Working with opposing counsel and consultants for the receipt of a
- 15 representative sampling and analyzing the same with the aid of expert
- 16 consultants and Plaintiff to perform analyses of liability and exposure;
- 17 • Selecting a mediator and mediation date;
- 18 • Preparation of a mediation brief and damages model for use at the mediation
- 19 session;
- 20 • Attendance at the mediation session;
- 21 • Negotiating, finalizing and fully executing the Settlement Agreement;
- 22 • Communicating with Plaintiff who requested updates or other information
- 23 regarding this matter; and
- 24 • Preparing the instant motion for preliminary approval.

25 Moreover, based on Class Counsel's experience in wage and hour class action litigation,  
26 Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend  
27 substantial amounts of additional time to help Class Members understand the terms of the proposed  
28 settlement, and to assist Class Members in the preparation and documentation of their claims. It is

1 also likely that, even after final approval of the settlement has been granted, Class Counsel will be  
2 called upon to expend additional amounts of time in the presentation and resolution of contests and  
3 disputes relating to Class Members' claims under the terms of the proposed settlement, as to the  
4 amounts of individual claims and perhaps other individual issues. Finally, Class Counsel will have  
5 to work with the Settlement Administrator to submit a report to this Court regarding the distribution  
6 plan pursuant to Code of Civil Procedure section 384 along with a proposed judgment, which will  
7 require further time and costs to be expended.

8 Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which  
9 are justified by the results achieved, the complexity of the issues, the difficulty of the case and the  
10 great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by  
11 Defendants and are well within established guidelines.

12 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**  
13 **PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE**

14 Plaintiff is entitled to an enhanced award for his service as class representative, for answering  
15 extensive questions by Class Counsel, for being available and answering questions during  
16 mediation, for the risks in being the named plaintiff and for providing Defendants with a more  
17 expansive release of claims, including a waiver based upon California Civil Code section 1542, in  
18 exchange for the enhancement award. Defendants do not oppose the requested enhancement to  
19 Plaintiff. Class Counsel can attest that Plaintiff devoted a great deal of time assisting Class Counsel  
20 in this case, communicated with counsel very frequently and was a very valuable participant in the  
21 strategy for and success of the mediation. Plaintiff risked intrusive discovery and the payment of  
22 employer costs. In the experience of Class Counsel, the typical enhancement award in wage and  
23 hour class actions ranges from approximately \$10,000.00 to \$25,000.00, although some awards are  
24 higher. In contrast, Class Counsel seek an extremely limited enhancement of \$7,500.00 to Plaintiff,  
25 for his service, which is commensurate to the time and effort he has put forth in the prosecution of  
26 this matter.

27 ///

28 ///

1           **IX.     CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

2                   **A.     The Class should be Preliminarily Certified**

3           In California, there are two certification prerequisites: (1) the existence of an “ascertainable  
4 class;” and (2) “a well-defined community of interest in the questions of law and fact involved  
5 affecting the parties to be represented.” (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th  
6 639, 647.) In addition, as set forth above, California courts utilize the procedures prescribed by the  
7 Federal Rules of Civil Procedure in class actions filed in California. (*Schneider v. Vennard* (1986)  
8 183 Cal.App.3d 1340, 1345-46; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 695; *Vasquez v. Sup.*  
9 *Ct.* (1971) 4 Cal.3d 800.) Indeed, to certify a class, the party advocating class treatment must  
10 demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class  
11 representatives with claims or defenses typical of the class; and (4) class representatives who can  
12 adequately represent the class.” (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker*  
13 *Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

14           Each of the criteria for class certification is satisfied in this instance:

15                   **1.     Ascertainability** – “Ascertainability” is a due process requirement that  
16 ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The  
17 determination is made by examining the class definition and the size of the class. One may also  
18 examine the means available to identify class members, but this is not the exclusive test. (*Noel v.*  
19 *Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980-981.)

20           Here, the Class Members definition (*i.e.*, all current and former non-exempt and hourly-paid  
21 employees who worked in California for Defendants at any time during the Class Period) is derived  
22 from the operative complaint, which complains of alleged violations of Labor Code sections that  
23 are chiefly and, in some instances, solely applicable to non-exempt and hourly-paid employees.  
24 There is no difficulty ascertaining who is a Class Member based on the above-described definition  
25 as it is readily apparent to all involved who is a non-exempt and hourly-paid employees who worked  
26 in California for Defendants during the Class Period based solely from Defendants’ payroll records,  
27 which amounts to approximately 191 persons. Thus, the Settlement Class is certainly ascertainable.

28    ///

1                   **2. Numerosity** – According to the California Supreme Court, a putative class is  
2 sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and  
3 thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.  
4 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if  
5 there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.)  
6 However, as few as 10 class members have been found sufficient. (*See, e.g., Bowles v. Sup. Ct.*  
7 (1955) 44 Cal.2d 574.)

8           Class Counsel understand from the documents provided that Defendants identified at least  
9 191 Class Members. That is sufficiently numerous to establish the numerosity requirement.

10                   **3. Commonality** – California law also requires that “questions of law or fact  
11 common to the class [be] substantially similar and predominate over the questions affecting the  
12 individual members.” (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)  
13 Common issues predominate when they would be “the principal issues in any individual action, both  
14 in terms of time to be expended in their proof and of their importance.” (*Vasquez v. Sup. Ct.* (1971)  
15 4 Cal.3d 800, 810; *see also Hatashi v. First American Home Buyers Protection Corp.* (2014) 223  
16 Cal.App.4th 1454, 1462-1463.) Common questions need only be “sufficiently pervasive to permit  
17 adjudication in a class action rather than in a multiplicity of suits.” (*Vasquez v. Sup. Ct.* (1971) 4  
18 Cal.3d 800, 810.) Commonality is easily satisfied if there is one issue common to class members.  
19 (*Hanlon v. Chrysler Corp.* (9th Cir. 1988) 150 F.3d 1011, 1019.)

20           This Litigation is brought to resolve common issues that include, without limitation: (1)  
21 whether Defendants failed to pay for all hours worked; (2) whether Defendants failed to authorize  
22 or permit Class Members to take compliant rest periods; (3) whether Defendants failed to provide  
23 Class Members with additional wages for missed rest periods; (4) whether Defendants failed to pay  
24 Class Members upon termination or resignation all wages earned; (5) whether Defendant are liable  
25 to Class Members for waiting time penalties; (6) whether Defendants failed to furnish Class  
26 Members with accurate wage statements; (7) whether Defendants failed to provide Class Members  
27 with compensation at their final rate of pay for vested paid vacation time; and (8) whether  
28 Defendants’ engaged in unfair competition.

1                   **4. Typicality** – Typicality requires only that the named plaintiff’s interests in  
2 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221  
3 Cal.App.4<sup>th</sup> 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4<sup>th</sup> 1004, 1021.) A  
4 representative plaintiff’s claims are typical if they arise from the same event, practice, or course of  
5 conduct that gives rise to the claims of other class members, and if his or her claims are based on  
6 the same legal theories. (*Miller v. Woods* (1983) 16 Cal.App.3d 862, 874; accord *In re Broadwing,*  
7 *Inc. ERISA Litigation* (S.D. OH. 2006) 252 F.R.D. 369, 377, citing *In re Am. Med. Sys.* (6<sup>th</sup> Cir.  
8 1996) 75 F.3d 1069, 1079, quot. Newberg on Class Actions, § 3-13 at 3-76.) Indeed, when the same  
9 underlying conduct affects the named plaintiffs and the class sought to be represented, the typicality  
10 requirement is met irrespective of any varying fact patterns that may underlie individual claims.  
11 (*See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4<sup>th</sup> 467, 473 [named plaintiff’s interests  
12 must only be significantly similar to other class members].)

13                   As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,  
14 explained:

15                   [I]t has never been the law in California that the class representative must have  
16 **identical** interests with the class members. The only requirements are that  
17 common questions of law and fact **predominate** and that the class representative  
be **similarly** situated.

18 (*Id.* at 1347, citations omitted, emphasis in original.)

19                   Plaintiff’s claims are typical of those of other Class Members as Plaintiff: (1) is a non-  
20 exempt, hourly-paid employee like other Class Members; (2) complains of not being paid for all  
21 time under Defendants’ control or suffered and/or permitted to work for Defendants; (3) complains  
22 of not receiving premium pay for non-compliant meal periods; among others.

23                   Accordingly, Plaintiff’s claims are typical of those of the Class Members.

24                   **5. Adequacy of Representation** - To maintain a class action, the representative  
25 plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221  
26 Cal.App.4<sup>th</sup> 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4<sup>th</sup> 1004, 1021.)  
27 Adequacy of representation consists of two components. First, there must be no disabling conflicts  
28 of interest between the class representatives and the class. Second, the class representative must be

1 represented by counsel who are competent and experienced in the kind of litigation to be undertaken.  
2 (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc.*  
3 *Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.)

4 Both criteria are met in this instance:

5 (i) **No Disabling Conflict of Interest Exists Between the Class**  
6 **Representative and the Class**

7 No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because  
8 Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiff  
9 classified as a non-exempt employee, hourly paid employee, not paid premium pay, etc.) and thus  
10 have the incentive to fairly represent all Class Members' claims to achieve the maximum possible  
11 recovery. Moreover, Plaintiff's goals have been realized via redress for employees whose wage and  
12 hour rights were violated.

13 (ii) **Class Counsel are Experienced Class Action Attorneys**

14 As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of  
15 experienced class action attorneys, have been appointed as class counsel in other class actions and  
16 have a successful "track record" in litigating class actions. After a thorough investigation and  
17 settlement discussions, the Parties arrived at terms that they viewed was in the best interest of both  
18 the Class Members and the Parties. Should the Court refuse to grant preliminary approval of this  
19 Settlement, many of the Class Members may be denied any recourse for Defendants' alleged  
20 violations.

21 **6. Superiority of Class Action** – Also relevant to the Court's certification  
22 decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp.*  
23 *v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

24 In that vein, "[t]his state has a public policy which encourages the use of the class action  
25 device." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299, citing *Sav-On Drug*  
26 *Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 240) Indeed, "with respect to the superiority of the  
27 class action mechanism ... courts regularly certify class actions to resolve wage and hour claims."  
28 (*Id.* at 300.) "In this arena the class action mechanism allows claims of many individuals to be

1 resolved at the same time, eliminates the possibility of repetitious litigation and affords small  
2 claimants with a method of obtaining redress for claims which otherwise would be too insufficient  
3 to warrant individual litigation.” (*Ibid.*) Moreover, Plaintiff contends that the issues slated for  
4 contest are primarily common issues involving common evidence. Plaintiff contends that it would  
5 not be efficient or fair to relegate these complaints to multiple trials.” (*Ibid.*, citing *Bufl v. Dollar*  
6 *Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208; see *Brinker Restaurant Corp. v. Sup.*  
7 *Ct.* (2012) 53 Cal.4th 1004, 1034.)

8 “Indeed, as the California Supreme Court elaborated in *Brinker Restaurant Corp.*  
9 *v. Sup. Ct.* (2012) 53 Cal.4th 1004, ‘a theory of liability that an employer has a  
10 uniform policy and that that policy measured against wage order requirements,  
11 allegedly violates the law – is by its nature a common question entirely suited for  
12 class treatment. [Citation.] In the general case to prematurely resolve such  
13 disputes, conclude a uniform policy complies with the law, and thereafter reject  
14 class certification ... places defendants in jeopardy of multiple class actions, with  
15 one after another dismissed until one trial court concludes there *is* some basis for  
16 liability and in that case approves class certification. [Citation.] It is far better  
17 from a fairness perspective to determine class certification independent of  
18 threshold questions disposing of the merits, and thus permit defendants who  
19 prevail on those merits, equally with those who lose on the merits, to obtain the  
20 preclusive benefits of such victories against an entire class and not just a named  
21 plaintiff.’  
22 (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 300, quot. *Brinker Restaurant Corp.*  
23 *v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034.) The Court further noted that:

18 “California courts consider ‘pattern and practice evidence, statistical evidence,  
19 sampling evidence, expert testimony, and other indicators of a defendant’s  
20 centralized practices in order to evaluate whether common behavior towards  
21 similarly situated plaintiffs make class certification appropriate. [Citation.] Other  
22 relevant factors include ‘whether the class approach would serve to deter and  
23 redress alleged wrongdoing.’ [Citation.] Moreover, in the wage and hour context,  
24 ‘[w]e have recognized that retaining one’s employment while bringing formal  
25 legal action against one’s employer is not ‘a viable option for many employees,’  
26 ‘and thus a class action may be appropriate as a current employee who  
27 individually sues his or her employer is at greater risk of retaliation.’ [Citations.]  
28 And ...our high court noted that class actions may be particularly useful for  
immigrant workers with limited English language skills, as illegal employer  
conduct might otherwise escape their attention.”

26 (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 300, citations omitted.)

27 The California Supreme Court has also noted that where individual suits are not brought by  
28 putative class members that this indicates that they have little interest in personally controlling their

1 claims.” (*Dynamex Operations West, Inc. v. Sup. Ct.* (2018) 4 Cal.5th 903, 924.) The Court should  
2 also consider that “consolidating all the claims before a single court would be desirable because it  
3 would allow for consistent rulings with respect to all the class members’ claims.” (*Ibid.*)

4 This wage and hour class action is a superior vehicle for resolution of the issues it seeks to  
5 resolve. It deals with common issues that are most efficiently adjudicated together, including: (1)  
6 whether Defendants failed to pay for all hours worked; (2) whether Defendants failed to authorize  
7 or permit Class Members to take compliant rest periods; (3) whether Defendants failed to provide  
8 Class Members with additional wages for missed rest periods; (4) whether Defendants failed to pay  
9 Class Members upon termination or resignation all wages earned; (5) whether Defendant are liable  
10 to Class Members for waiting time penalties; (6) whether Defendants failed to furnish Class  
11 Members with accurate wage statements; (7) whether Defendants failed to provide Class Members  
12 with compensation at their final rate of pay for vested paid vacation time; and (8) whether  
13 Defendants’ engaged in unfair competition.

14 Moreover, with approximately 191 Class Members, presentation of all of them before this  
15 Court may be problematic, impractical, and burdensome on the Court. On the contrary, a class action  
16 allows claims of many individuals to be resolved at the same time, eliminates the possibility of  
17 repetitious litigation, and affords small claimants with a method of obtaining redress for claims  
18 which otherwise would be too insufficient to warrant individual litigation. It is also brought by a  
19 former employee who is not at the greater risk of retaliation than current employees who are less  
20 likely to seek such redress for themselves. In addition, Class Counsel is not aware of any other action  
21 against Defendants brought on an individual basis, which signals that Class Members have little  
22 interest in personally controlling their claims. Moreover, a class action would eradicate the concern  
23 of inconsistent rulings regarding the wage and hour issues brought as part of this class action.

24 **7. Conclusion** – Thus, because this class action meets all criteria for  
25 certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement  
26 purposes, it should be certified for purposes of effectuating this settlement. (*Caro v. Procter &*  
27 *Gamble Co.* (1993) 18 Cal.App.4th 664, 654 [“[i]f the statutory criteria are satisfied, a trial court  
28 is under a duty to certify the class and is vested with no discretion to deny certification based upon

1 other considerations”]; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1800, 1807, n. 19, citations  
2 omitted [there is a “lesser standard of scrutiny for settlement cases”].

3 **X. CONCLUSION**

4 The proposed Settlement Agreement is fair, adequate, and reasonable. It will result in  
5 substantial payments to Class Members; it is non-collusive; and it was achieved as the result of  
6 informed, extensive, and arm’s-length negotiations conducted by counsel for respective parties who  
7 are experienced in wage and hour class action litigation.

8 For the foregoing reasons, the Parties respectfully request that the Court grant preliminary  
9 approval of the proposed settlement, sign the proposed Order, approve, and authorize mailing of the  
10 proposed Class Notice submitted herewith, and set a date for the final approval hearing.

11  
12 Dated: March 22, 2023

BIBIYAN LAW GROUP, P.C.

13  
14 

15 DAVID D. BIBIYAN

VEDANG J. PATEL

IONA LEVIN

16 Attorneys for Plaintiff, GENARO JUAREZ, on  
17 behalf of himself and all others similarly situated  
18 and aggrieved  
19  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my mailing address is 8484 Wilshire Boulevard, Suite 500, Beverly Hills, California 90211.

On March 22, 2023, I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF DAVID D. BIBIYAN, VEDANG J. PATEL, PLAINTIFF IN SUPPORT THEREOF; AND [PROPOSED] ORDER** to be served by electronic transmission via email to the parties and/or counsel set forth in the below service list:

Anthony C. Oceguela  
Anthony.Oceguela@lewisbrisbois.com  
LEWIS BRISBOIS BISGAARD & SMITH, LLP  
2020 West El Camino Avenue, Suite 700  
Sacramento, CA 95833

**Attorney for Defendants Calmet Services, Inc., and Calmet Properties, LLC**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 2023, at Beverly Hills, California.

/s/ Jennifer Echeverria  
Jennifer Echeverria

Exhibit B

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Spring Street Courthouse, Department 14

**21STCV33668**

**GENARO JUAREZ vs CALMET SERVICES, INC., et al.**

October 31, 2023

10:00 AM

Judge: Honorable Kenneth R. Freeman

Judicial Assistant: I. Arellanes

Courtroom Assistant: C. Gomez

CSR: None

ERM: None

Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): Anthony C. Ocegura (via LACC)

Other Appearance Notes: For Plaintiff(s): Iona Levin (via LACC);

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**NATURE OF PROCEEDINGS:** Hearing on Motion for Preliminary Approval of Settlement

The matter is called for hearing.

The Court has read and considered all documents in connection to the above entitled motion.

The Court and counsel confer regarding the motion.

The Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class and Representative Action Settlement and Provisional Class Certification for Settlement Purposes Only filed by Genaro Juarez on 03/22/2023 is Granted. The granting of the motion is contingent upon the parties submitting the exemplar of the amended notice reflecting changes within ten (10) days.

Counsel is to submit forthwith a [Proposed] Order containing a calendar of events leading up to the final approval hearing and is to call the courtroom to obtain a final approval hearing date.

Notice is deemed waived.

Exhibit C

Electronically Received 05/30/2023 05:47 PM

**FILED**  
Superior Court of California  
County of Los Angeles

08/17/2023

David W. Slayton, Executive Officer / Clerk of Court

By: T. Le Deputy

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Attorneys for Plaintiffs, on behalf of themselves  
and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

DELVIN HINES, on behalf of himself and all  
others aggrieved,

Plaintiff,

v.

CONSTELLIS INTEGRATED RISK  
MANAGEMENT SERVICES, a Delaware  
corporation; CENTERRA SERVICES  
INTERNATIONAL, INC., a Delaware  
corporation; CENTERRA GROUP, LLC, a  
forfeited Delaware limited liability company;  
MICHAEL CHANDLESS, an individual; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV26962

[Assigned to the Hon. Christopher K. Lui in  
Dept. 76]

~~PROPOSED~~ **ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND REPRESENTATIVE  
ACTION SETTLEMENT AND  
CERTIFYING CLASS FOR  
SETTLEMENT PURPOSES ONLY**

This Court, having considered the Motion of plaintiffs Delvin Hines, Gerald Francel, Robert Andrews, Steven Cueto, Eric Fleming, Robert Franco, Tracie Grove, Joshua Mcmichael, Leticia Falcon, Viet Truong, Carlos Ulloa, and Daniel Lange (collectively, the “Plaintiffs”) for Preliminary Approval of the Class Action and Representative Action Settlement and Provisional Class

1 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations  
2 of David D. Bibiyan, Vedang J. Patel, Plaintiffs, and Jodey Lawrence, the Joint Stipulation re: Class  
3 Action and Representative Action Settlement (the “Settlement,” “Settlement Agreement” or  
4 “Agreement”), the Notice of Proposed Class Action Settlement and Date for Final Approval Hearing  
5 (“Class Notice”), and other documents submitted in support of the Motion for Preliminary Approval,  
6 hereby **ORDERS, ADJUDGES AND DECREES THAT:**

7 1. The definitions set out in the Settlement Agreement are incorporated by reference  
8 into this Order; all terms defined therein shall have the same meaning in this Order.

9 2. The Court certifies the following settlement class (“Settlement Class,” “Settlement  
10 Class Members” or “Class Members”) for the purpose of settlement only: all current and former  
11 non-exempt, hourly-paid employees who worked in California for defendant Centerra Services  
12 International, Inc. (“CSI”), at any time during the period from May 28, 2016 through the earlier of:  
13 (1) 90 days after execution of the Agreement; or (2) the date the Court grants preliminary approval  
14 (“Class Period”), but expressly excludes anyone other than the Plaintiffs who, prior to the conclusion  
15 of the Class Period, has filed their own legal action alleging the same or similar claims as pled in  
16 the Action, although any excluded individuals may still be Aggrieved Employees under the terms  
17 of the Settlement Agreement and if so, such individuals will still be entitled to share in a pro-rata  
18 portion of the PAGA Payment and be bound to the PAGA releases in the Agreement. For any  
19 Settlement Class Members who worked for defendant Centerra Group, LLC (“CG”), that are part  
20 of the settlement class in *Duley v. Centerra Group, LLC* filed in Los Angeles County Superior Court,  
21 Case No. 19STCV31908 (“*Duley*”) as defined therein, the Settlement shall have no effect on their  
22 rights to participate in and receive any settlement proceeds in *Duley* for which they might be eligible  
23 under the terms of the *Duley* settlement.

24 3. The Court preliminarily appoints named plaintiffs Delvin Hines, Gerald Francel,  
25 Robert Andrews, Steven Cueto, Eric Fleming, Robert Franco, Tracie Grove, Joshua McMichael,  
26 Leticia Falcon, Viet Truong, Carlos Ulloa, and Daniel Lange as Class Representatives, and David  
27 D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C., as Class Counsel.

28 4. The Court preliminarily approves the proposed class settlement upon the terms and

1 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the  
2 settlement appears to be within the range of reasonableness of settlement that could ultimately be  
3 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement  
4 amount is fair, adequate, and reasonable as to all potential class members when balanced against the  
5 probable outcome of further litigation relating to liability and damages issues. It further appears that  
6 extensive and costly investigation and research has been conducted such that counsel for the parties  
7 at this time are reasonably able to evaluate their respective positions. It further appears to the Court  
8 that the settlement at this time will avoid substantial additional costs to all parties, as well as the  
9 delay and risks that would be presented by the further prosecution of the Action. It further appears  
10 that the settlement has been reached as the result of intensive, non-collusive and arms-length  
11 negotiations utilizing an experienced third-party neutral.

12 5. The First Amended Complaint ("FAC"), attached to the Settlement Agreement as  
13 Exhibit "A," is deemed filed on the date this order is signed. The FAC is the "Operative Complaint"  
14 in this Action. Defendants are deemed to generally deny all the allegations set forth in the FAC  
15 pending final approval of the Settlement, without any need to file a separate answer to the FAC.

16 6. The Court approves, as to form and content, the Class Notice that has been submitted  
17 herewith.

18 7. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to  
19 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The  
20 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies  
21 with the requirements of law and appears to be the best notice practicable under the circumstances.

22 8. The Court hereby preliminarily approves the definition and disposition of the Gross  
23 Settlement Amount of \$1,025,000.00, which is inclusive of: attorneys' fees of up to thirty-five  
24 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement  
25 Agreement, amounts to \$358,750.00, in addition to actual costs incurred of up to \$50,000.00;  
26 enhancement award of up to \$10,000.00 to plaintiff Delvin Hines and \$5,000.00 each to plaintiffs  
27 Gerald Francel, Robert Andrews, Steven Cuoto, Eric Fleming, Robert Franco, Tracie Grove, Joshua  
28 McMichael, Leticia Falcon, Viet Truong, Carlos Ulloa and Daniel Lange; costs of settlement

1 administration of no more than \$7,950.00; and Private Attorneys' General Act of 2004 ("PAGA")  
2 penalties in the amount of \$100,000.00, of which \$75,000.00 (75%) will be paid to the Labor and  
3 Workforce Development Agency ("LWDA") and \$25,000.00 (25%) to "Aggrieved Employees,"  
4 defined as all non-exempt, hourly-paid employees of defendant CSI in California who received  
5 wages for hours worked during the period from May 11, 2019 through the earlier of: (1) 90 days  
6 after execution of the Agreement; or (2) the date the Court grants preliminary approval ("PAGA  
7 Period").

8 9. The Gross Settlement Amount expressly excludes Employer Taxes, which will be  
9 paid separately and apart by Defendants on the wages portion of the Gross Settlement Amount.

10 10. Within ten (10) business days following the occurrence of the Effective Date of the  
11 Settlement, Defendants shall remit payment of the Gross Settlement Amount (as the same may be  
12 escalated pursuant to the Agreement) and Employer Taxes to the Settlement Administrator pursuant  
13 to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement  
14 account ("QSA") with an FDIC insured banking institution, for distribution in accordance with the  
15 Agreement and the Court's Orders and subject to the conditions described in the Agreement.

16 11. Class Member's "Workweek" shall mean the number of weeks that a Settlement  
17 Class Member or Aggrieved Employee (as applicable) was employed by and was paid wages for  
18 hours worked for defendant CSI in a non-exempt, hourly-paid position during the Class Period or  
19 PAGA Period (as applicable) in California, based on hire dates, re-hire dates (as applicable), and  
20 termination dates (as applicable).

21 12. The Gross Settlement Amount is based on Defendants' representation that there were  
22 no more than 20,498 Workweeks worked through the mediation date. In the event that it is  
23 determined that the number of Workweeks worked by Class Members during the Class Period  
24 increases by more than 10%, or 2,050 Workweeks, then the Gross Settlement Amount shall be  
25 increased by one percent (1%) for every one percent (1%) increase in Workweeks over the 10%  
26 threshold. Thus, for example, if the number of Workweeks worked during the Class Period increases  
27 by 12%, or 2,460 Workweeks, for a total of 22,958 Workweeks (20,498 Workweeks + 2,460  
28 Workweeks), then the Gross Settlement Amount shall be increased by 2%, or \$20,500.00

1 (\$1,025,000.00 x .02), for an increased Gross Settlement Amount of \$1,045,500.00 (\$1,025,000.00  
2 + \$20,500.00).

3 13. The Court deems Phoenix Settlement Administrators (“Phoenix” or “Settlement  
4 Administrator”), the Settlement Administrator, and payment of administrative costs, not to exceed  
5 \$7,950.00, out of the Gross Settlement Amount for services to be rendered by Phoenix on behalf of  
6 the class.

7 14. Within seven (7) calendar days after the Response Deadline, or soon thereafter, the  
8 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the  
9 completion of the notice process, including the number of attempts to obtain valid mailing addresses  
10 for and re-sending of any returned Class Notices, as well as the identities, number of, and copies of  
11 all Requests for Exclusion and Objections received by the Settlement Administrator, if any.

12 15. Within twenty (20) business days after the Preliminary Approval Date, Defendants’  
13 Counsel shall provide the Settlement Administrator with information with respect to each Settlement  
14 Class Member and/or Aggrieved Employee, including his or her: (1) name; (2) last known  
15 address(es) currently in Defendants’ possession, custody, or control; (3) last known telephone  
16 number(s) currently in Defendants’ possession, custody, or control; (4) last known Social Security  
17 Number(s) in Defendants’ possession, custody, or control; (5) the dates of employment (*i.e.*, hire  
18 dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member  
19 and/or Aggrieved Employee; and (6) the Workweeks for each Settlement Class Member for the  
20 Class Period and Workweeks for each Aggrieved Employee for the PAGA Period, respectively  
21 (“Class List”).

22 16. The Settlement Administrator shall perform an address search using the United States  
23 Postal Service National Change of Address (“NCOA”) database and update the addresses contained  
24 on the Class List with the newly-found addresses, if any.

25 17. Within seven (7) calendar days, or soon thereafter, of receiving the Class List from  
26 Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the  
27 Settlement Class Members via first-class regular U.S. Mail using the most current mailing address  
28 information available.

1 18. “Response Deadline” means the deadline for Settlement Class Members to mail any  
2 Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which  
3 is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and  
4 Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an  
5 instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-  
6 five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark  
7 a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the  
8 exclusive means for determining whether a Request for Exclusion, Objection, or Workweek Dispute  
9 was submitted by the Response Deadline.

10 19. Any Settlement Class Member may request exclusion from (*i.e.*, to “opt out” of) the  
11 Class Settlement by mailing a written request to be excluded from the Class Settlement (“Request  
12 for Exclusion”) to the Settlement Administrator, postmarked on or before the Response Deadline.  
13 To be valid, a Request for Exclusion must be timely submitted and must include the following in  
14 writing: (1) the Class Member’s name; (2) the Class Member’s Social Security Number; (3) the  
15 Class Member’s signature; and (4) a statement that the Class Member seeks to be excluded from the  
16 Settlement Class using the same or any other language standing for the proposition the Class  
17 Member seeks to be excluded from the Settlement Class: “Please exclude me from the Settlement  
18 Class in the *Hines v. Constellis Integrated Risk Management Services, et al.* matter. I understand  
19 that by requesting exclusion, I will not participate in the class settlement and will not receive any  
20 money from the class settlement.”

21 20. Any Settlement Class Member who does not opt out of the Settlement Class by  
22 submitting a timely and valid Request for Exclusion will be bound by all terms of the Settlement,  
23 including those pertaining to the Class Released Claims, as well as any Judgment that may be  
24 entered by the Court if Final Approval of the Class Settlement is granted.

25 21. Participating Class Members may object only to the Class Settlement; neither  
26 Participating Class Members nor PAGA Aggrieved Employees may object to the PAGA settlement.  
27 In order for any Settlement Class Member to object to this Class Settlement in writing, or any term  
28 of it, he or she must do so by mailing a written objection to the Settlement Administrator at the

1 address provided on the Class Notice, with such objection postmarked no later than the Response  
2 Deadline.

3 22. Settlement Class Members need not object in writing to be heard at the Final  
4 Approval Hearing; they may object or comment in person at the hearing at their own expense.

5 23. A Settlement Class Member cannot submit both a Request for Exclusion and an  
6 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the  
7 Request for Exclusion will control and the Objection will be overruled.

8 24. All papers filed in support of final approval, including supporting documents for  
9 attorneys' fees and costs, shall be filed by ~~FDI DEG~~.

10 25. A Final Fairness and Approval Hearing shall be held with the Court on  
11 ~~FDI DEG~~ at ~~1:00~~ ~~pm~~ in Department 76 of the above-entitled Court to determine:

12 (1) whether the proposed settlement is fair, reasonable and adequate, and should be finally approved  
13 by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the  
14 amount of service award to the Class Representative; (4) the amount to be paid to the Settlement  
15 Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and  
16 Aggrieved Employees.

17 26. Within seven (7) calendar days after payment of the full Gross Settlement Amount  
18 and Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement  
19 Administrator shall distribute Payments from the QSA for: (1) the Service Award to Plaintiffs as  
20 approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as  
21 approved by the Court; (3) the Settlement Administrator Costs, as approved the Court; (4) the  
22 LWDA Payment, as approved by the Court; and (5) Individual PAGA Payments as approved by the  
23 Court. The balance remaining shall constitute the Net Settlement Amount from which Individual  
24 Settlement Payments shall be made to Participating Class Members, less applicable taxes and  
25 withholdings.

26 ///

27 ///

28 ///

1        27. Any checks from this distribution shall remain valid and negotiable for one hundred  
2 eighty (180) calendar days after the date of their issuance. After expiration of the 180-day period,  
3 checks for such payments shall be cancelled and funds associated with such checks shall be  
4 transmitted to the California Controller's Office Unclaimed Property Fund, thereby leaving no  
5 "unpaid residue," subject to the requirements of California Code of Civil Procedure Section 384.

6  
7 **IT IS SO ORDERED.**

8  
9 Dated: 08/17/2023



A handwritten signature in black ink, appearing to read "Christopher K. Lui".

Christopher K. Lui / Judge

Judge of the Superior Court

Exhibit D

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Spring Street Courthouse, Department 12

**23STCV08761**

December 14, 2023

**MACKENZIE ANNE THOMA vs VVN GROUP LLC, et al.**

1:45 PM

Judge: Honorable Carolyn B. Kuhl

CSR: Celinda Aligada CSR# 13724

Judicial Assistant: L. M'Greene

ERM: None

Courtroom Assistant: M.Miro

Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Sarah Hannah Cohen LACourtConnect

For Defendant(s): Brad S Kane LACourtConnect

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**NATURE OF PROCEEDINGS:** Order to Show Cause Re: Why this Court has Jurisdiction to Proceed; Initial Status Conference

The matter is called for hearing.

Pursuant to Government Code sections 68086, 70044, California Rules of Court, rule 2.956, and the stipulation of appearing parties, Celinda Aligada CSR# 13724, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Court signs and files the Order re: Authorizing Electronic Service for Case Anywhere this date and a conformed copy is provided to Plaintiff's counsel via e-mail.

If there are unresolved issues, a JOINT request for Court guidance shall be posted on the electronic service message board.

The Court requires a pre-motion conference prior to any motion being filed. A joint request may be posted on the message board.

The Court will allow plaintiff to file a Motion to Lift the Stay.

The Court stays the case in it's entirety pending determination in Federal Court of the claims pending there.

A Joint Status Report re: Status of Federal Case is to be filed by 4/29/2024.

Non-Appearance Case Review re: Filing of the Joint Status Report re: Status of Federal Case is scheduled for 05/02/2024 at 04:30 PM in Department 12 at Spring Street Courthouse.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Spring Street Courthouse, Department 12

**23STCV08761**

December 14, 2023

**MACKENZIE ANNE THOMA vs VXN GROUP LLC, et al.**

1:45 PM

Judge: Honorable Carolyn B. Kuhl

CSR: Celinda Aligada CSR# 13724

Judicial Assistant: L. M'Greene

ERM: None

Courtroom Assistant: M.Miro

Deputy Sheriff: None

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The Court finds that the following cases, 23STCV08761 and 23STCV16142, are related within the meaning of California Rules of Court, rule 3.300(a). 23STCV08761 is the lead case. For good cause shown, said cases are assigned to Judge Carolyn B. Kuhl in Department 12 at Spring Street Courthouse for all purposes.

Plaintiff is to provide notice.